

Internal Revenue Service
District Director

Department of the Treasury
P.O. Box 2508 - TE/GE
Cincinnati, OH 45201

Date: DEC 20 1999

Employer Identification Number:

Person to Contact/Agent I.D. #

Telephone Number:

Dear Sir:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association. Contributions to your are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

FILL COPY

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that:

A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely,

C. Ashley Bullard
C. Ashley Bullard
District Director

Enclosures: 3

ENCLOSURE I

BACKGROUND

Review of the application and subsequent correspondence shows that the [REDACTED] was incorporated in [REDACTED]. Article II of the Articles of Organization states the purpose of the corporation to be "to promote ecological awareness". The Articles of Organization were amended in [REDACTED] to change the name of the corporation to [REDACTED].

APPLICATION

Form 1023 (Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code) was submitted to the Internal Revenue Service on [REDACTED]. The application states that the principal purpose of the corporation is to stimulate and enhance public awareness of, interest in and appreciation of ecology. Its objective is to convince the public to live with the [REDACTED] that will not deplete its resources faster than they can be renewed, otherwise known as "sustainable living".

The application states that the original activities of the corporation included seminars and courses focusing on ecological issues and an annual organic garden or farm tour. Realizing only limited success, the corporation instituted two major programs to broaden its appeal: an organic food cooperative and a farmer's market.

Since the inception of these programs, it appears that the original educational purpose of the organization has all but disappeared. In [REDACTED], the programs accounted for [REDACTED] percent of the organization's revenues. Its educational programs accounted for an insubstantial amount of its income.

Similarly, a major part of its expenses are the costs associated with operating these programs. In [REDACTED], the organic food cooperative was estimated to have used [REDACTED] percent of the organization's resources; the farmer's market, [REDACTED] percent. The treasurer of the organization stated, in response to a request for additional information, that the organization's financial statements made it "look like some kind of a [REDACTED]". To downplay this appearance, the programs were categorized as "[REDACTED]" for accounting purposes.

The organization is a membership organization, open to the general public. Additional fees are required to join the food cooperative.

The food cooperative operates by buying the crops of one or more local organic farmers and splitting the weekly harvest among the members of the cooperative.

INTERNAL REVENUE CODE AND FEDERAL INCOME TAX REGULATIONS

Section 501(c)(3) of the Internal Revenue Code (Code) provides for the exemption of organizations organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(i) of the Income Tax Regulations (Regulations) provides that an organization, to be exempt under section 501(c)(3), must be both organized and operated exclusively for one or more of the purposes specified in that section.

Section 1.501(c)(3)-1(b)(1)(iv) of the Regulations provides that in no case will an organization be considered to be organized for exclusively one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(b)(4) of the Regulations provides that an organization is not organized for one or more exempt purposes unless its assets are dedicated to an exempt purpose under section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

REVENUE RULINGS AND COURT CASES

Revenue Ruling 71-395, 1971-2 C.B. 223 held that a cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their works does not qualify for exemption under section 501(c)(3) of the Code. In that case, the cooperative gallery served the private purposes of its members, even though the exhibition and sales of paintings may be an educational activity in other respects.

In *Better Business Bureau of Washington, D.C., Inc. vs. United States* (326 U.S. 279), denial of exemption under section 501(c)(3) of the Internal Revenue Code was upheld because a corporation operated "exclusively" for educational purposes is destroyed by the presence of a single non-educational purpose, if substantial in character, regardless of the number or importance of truly educational purposes.

CONCLUSION

Based on the information submitted, it appears that your organization will not meet the operational test for exemption under section 501(c)(3) of the Code. Activity on a cooperative basis is not a charitable activity. The basic function of a cooperative is to provide some form of economic benefit to its members, an objective that is inherently incompatible with the fundamental precept underlying section 501(c)(3) of the Code that states that the resources of a charitable organization must be devoted to a public purpose.

It appears that you are operating for the mutual benefit of your members and, therefore, do not serve a public interest as required by section 1.501(c)(3)-1(d)(1)(ii) of the Regulations. The cooperative structure of the organization results in a more than incidental benefit serving the private interests of the members.

Further, the farm cooperative does not serve an educational purpose. It has been ruled that a single non-educational purpose destroys the assertion that an organization is formed exclusively for educational purposes.

Accordingly, we have concluded that your organization does not qualify for exemption under section 501(c)(3) of the Internal Revenue Code. This letter denies the exemption requested through your application on Form 1023.